

COORDINATED TRIAL COURTS OF ORANGE COUNTY RULES

DIVISION 8

CRIMINAL

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Chapter 1**Felony Cases****RULE 800. PRETRIAL MOTIONS IN FELONY CASES****A. General Applicability.**

This rule applies to any of the following motions in a felony case once the indictment or information has been filed:

1. Demurrer to Indictment or Information (Penal Code Section 1004) where court authorizes filing after entry of plea.
2. Motion to dismiss Indictment or Information (Penal Code Section 995).
3. Motion under Penal Code Section 1538.5 and other motions to suppress evidence or for return of property unlawfully seized.
4. Motion for discovery, including discovery relating to informants claimed to be material witnesses.
5. Motion to compel a lineup.
6. Motion to sever or consolidate cases, counts, or defendants.
7. Any speedy trial motion where grounds exist at the time set herein for making pretrial motions.
8. Motion to challenge jury selection system.
9. Any other motion to dismiss or strike, statutory or nonstatutory, where the grounds exist at the time set herein for making pretrial motions.

B. Time for Motions and Hearing.

1. Except as otherwise authorized by the court, or required by statute, all motions, together with points and authorities, shall be in writing and must be filed with the clerk in the trial department, or with the Criminal Clerk's Office if the clerk of the trial department is not available, together with proof of service on the responding

party no later than 4:30 p.m. of the second Friday immediately preceding the pretrial motion/trial readiness conference date. The motion shall designate a hearing at 9:00 a.m. on the second Friday immediately preceding the trial date. The clerk may refuse to file any motion not in compliance with this Section.

2. All motions shall contain in the upper right-hand corner of the first page, the filing party's estimate of the overall time required for the hearing of the matter, date and department number of the hearing, and a request for a removal order if a defendant or necessary witness is in custody. If the court has not previously ordered the defendant to be present at the pretrial motion date and the defendant is not in custody, counsel for said defendant shall give written notice of said hearing date to the defendant and file a proof of service of same at the time the motion is filed. Failure to request a removal order when one is required, or to give such notice to such noncustodial defendant, may result in said motion being taken off calendar.

C. General Procedure.

1. All motions, together with points and authorities, shall be separately filed. All filings shall be accompanied by proof of service on the opposing party or parties. Where the appropriate Monday or Friday is a legal holiday, the time for filing is extended until noon of the next working day.
2. The responding party must file with the clerk in the department hearing such motions, or with the Criminal Clerk's Office if the clerk in the hearing department is not available, responding points and authorities, together with proof of service on the attorney for the moving party not later than noon of the Monday immediately preceding the pretrial motion/trial readiness conference date, unless that Monday is a legal holiday, in which case the time for filing is extended until noon of the next working day.
3. The moving party must file with the clerk in the department hearing such motions, or with the Criminal Clerk's Office if the clerk in the hearing department is not available, any reply points and

authorities, together with appropriate proof of service, no later than noon of the Thursday immediately preceding said motion, unless that Thursday is a legal holiday, in which case the time for filing is extended until 9:00 a.m. of the day originally scheduled for the hearing

4. Continuances of hearings on motions shall not be granted except for good cause shown and upon the filing of a written notice of intention to move for such continuance with the clerk of the department hearing such motions or with the Criminal Clerk's Office if the clerk in the hearing department is not available, together with proof of service upon the opposing counsel, prior to noon of the Wednesday before the hearing.
5. The requirements for all motions subject to this rule shall be the same except cases that come within the provisions of subdivision (b) of Penal Code Section 1048. In those cases the judge assigned to the trial department shall specially set the pretrial motion/trial readiness conference date and the filing deadlines.

D. Additional Requirements for Penal Code Section 995 Motions.

1. Moving papers relating to such motions shall include the following:
 - a. A brief statement in summary form of the facts as set forth in the transcript.
 - b. A statement of the issues, specifically identifying in what regard the People's case is defective.
 - c. Where defendant intends to rely upon some testimony in the transcript, the moving papers shall contain references to such testimony identified as to page and line number of the transcript.
 - d. A statement of the authorities upon which defendant relies with explanation as to why they are applicable. (Mere citation of sections in the California Penal Code and the U.S. Constitution shall not be sufficient.)

E. Additional Requirements for Penal Code Section 1538.5 Motions.

1. Moving papers relating to such motions shall include the following:
 - a. A complete statement of all the facts known to counsel at the time the motion is filed upon which the moving party relies in support of the motion.
 - b. A complete specification of the exact matters or things sought to be suppressed or returned ("all evidence seized on..." ...without listing the items is not a specification).
 - c. A statement of the issues, specifically identifying in what regard the search or seizure is defective. Such statement shall specifically state the theory or theories which shall be relied upon and urged for the suppression of evidence.
 - d. A statement of authorities citing the specific authority or authorities which will be offered in support of the theory or theories upon which suppression of evidence is urged.
 - e. Where a motion to suppress was made at the preliminary hearing, any references in the supporting papers to such testimony shall be identified as to volume number, if more than one volume, page and line number in the transcript.
 - f. Where no motion to suppress was made at the preliminary hearing and if the moving party requests testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request by the moving party to submit the matter on the statement or statements of fact and the argument of counsel.
 - g. Where a motion to suppress was made at the preliminary hearing and if the moving party requests additional testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request on the

part of the moving party that the matter be submitted on the transcript(s) of prior proceedings and the argument of counsel.

2. Responding papers to such motions shall include the following:
 - a. A complete statement of all the facts known to counsel at the time the responding papers are filed upon which the responding party relies in opposition to the motion.
 - b. A statement of the issues, specifically identifying in what regard the search or seizure is justified. Such statement shall specifically state the theory or theories which shall be relied upon and urged to justify the search or seizure.
 - c. A statement of authorities citing the specific authority or authorities which will be offered in support of the theory or theories upon which justifications for the search or seizure are urged.
 - d. Where no motion to suppress was made at the preliminary hearing and if the responding party requests testimony be received by the court at such hearing, the first page of the notice of motion, or motion shall so indicate. The failure to so indicate shall be construed by the court as a request by the responding party to submit the matter on the statement or statements of fact and the argument of counsel.
3. Reply papers relating to such motions shall include the following:
 - a. A statement of all additional facts known to counsel at the time reply papers are filed upon which the moving party relies in reply to the responding party's statement of facts.
 - b. A statement of all additional issues upon which the moving party relies in reply to the responding party's statement of issues.
 - c. A statement of any additional authorities upon which the moving party relies in reply to the responding party's statement of authorities.

4. If the pleadings (moving, responding and reply papers) raise no disputed issues of fact, the court will determine said motion on the pleadings and the argument of counsel. If the pleadings raise disputed issues of fact, the court will receive only such testimony as is necessary to resolve the disputed issues of fact or facts.
- F. Additional Requirements for Motions to Challenge Jury Selection System and/or Discovery Motions Related Thereto.
1. All motions shall be filed in the department of the Presiding Judge (Department 1), whether or not the criminal case has been assigned to a judge for all purposes.
 2. Moving papers relating to such motions shall include a statement of the issues specifically identifying in what regard the jury selection system is defective.
 3. All moving papers relating to such motions shall be separately served on the Jury Commissioner, Deputy Jury Commissioner, or court employees whose primary employment is in the Jury Services Division the same date the moving papers are served on the responding party. Proof of service shall be filed with the original moving papers.
 4. The Jury Commissioner, Deputy Jury Commissioner, or court employees whose primary employment is in the Jury Services Division shall not be called to testify at the hearing on a motion to challenge the jury selection system unless given three court days prior notice.
 5. For good cause shown, the court may waive any of the above additional requirements.
- G. Effect of Noncompliance With These Rules.
1. If any motion subject to this rule is not made within the time limits and pursuant to the requirements of this rule, the failure to do so shall constitute a waiver of the right to make the motion, but the court for good cause shown, may grant relief from the waiver.
 2. If any response is not made within the time limits and pursuant to the requirements of this rule, the failure to do so may result in the refusal of the court to consider such response.

(Revised effective July 1, 1985; revised effective July 1, 1991; revised effective July 1, 1992; revised effective July 1, 1998)

Chapter 2**Misdemeanor Cases****RULE 850. LAW AND MOTION**

In misdemeanor cases and in felony cases before an order holding a defendant to answer is issued, matters set for a motion shall have such motion noticed in writing, served on the prosecuting attorney and filed with the clerk, along with a proof of service, no less than ten days prior to the hearing date unless otherwise provided by law or otherwise ordered by the court. Written opposition to any motion is not required; however, if submitted, it must be served on the moving party and filed with the clerk, along with the proof of service, at least three days prior to the hearing.

(Effective July 1, 1998)

RULE 852. ACCEPTANCE OF PLEAS

A defendant who absents himself from a misdemeanor proceeding wherein a plea is entered through counsel and the pronouncement of immediate judgment is requested, must do so with full knowledge of the pendency of criminal proceedings. Further, the court must be confident that the waiver of all rights, including the right to be present, is made knowingly and intelligently, and that acts of counsel are authorized by the defendant.

- A. To implement the foregoing policy, a declaration shall have been executed by the defendant and his attorney, and shall be filed at the time of entry of the plea and prior to pronouncement of judgment. Said declaration shall contain:
 - 1. An express waiver of the defendant's presence for the entry of the plea if guilty or nolo contendere; and
 - 2. An acknowledgment that the defendant has read and considered, and the attorney has explained to the defendant, each and every legal and constitutional right which the defendant is waiving. Further, an acknowledgment that the defendant understands each of the rights being waived.

- B. Defense counsel shall submit to the court, for the judge's approval, a completed notarized "Tahl" form containing the terms and conditions of a negotiated plea or a plea to the court. No such form shall be accepted for consideration unless it includes the following:
 - 1. Specification of the counts to which the defendant is pleading;
 - 2. If applicable, specification of the counts the district attorney is dismissing;
 - 3. Proposed stay date for any fine, jail sentence and/or restitution;
 - 4. Proposed report back dates for progress review, program compliance or other purpose.
- C. Defense counsel shall submit a written stipulation for a continuance of the pretrial hearing, with a time waiver, signed by defense counsel and, if applicable, a deputy district attorney, setting the date for the next pretrial hearing. The subsequent pretrial hearing shall be set, if possible, in the court of the judge who approves the plea.
- D. The judge shall direct the clerk to prepare a disposition/minute order pursuant to the terms contained in the "Tahl" form; provided that the judge may make such other orders as the court considers proper.
- E. The clerk shall deliver the "Tahl" form and disposition/minute order to the attorney for the defendant. After delivery to defense counsel no changes or alterations shall be made to the disposition/minute order. Provided however, that the clerk may, at the time judgment is entered, place the names of the judge and clerk and the date on which judgment is rendered on the disposition/minute order. If any additions to or deletions from the terms and conditions of the judgment are to be made after the disposition/minute order has been signed by the defendant, a new disposition/minute order must be submitted which contains all of the terms and conditions of the judgment and which meets the requirements set forth in paragraph F below.
- F. If possible, defense counsel shall return to the court of the judge who approved the plea at the next subsequent pretrial hearing and must simultaneously submit the notarized "Tahl" form containing the signatures of the defendant, defendant's attorney of record and, if applicable, a deputy district attorney, and the notarized disposition/minute order containing the terms and

conditions of probation, the defendant's name, home address, phone number, signature and date of signature.

(Effective July 1, 1998)

RULE 854. PRETRIAL CONFERENCES

In misdemeanor criminal cases, when a not guilty plea has been entered, a pretrial settlement conference shall be set, leading to a prompt, efficient and just disposition of criminal cases. In no event shall a case be set on the pretrial calendar until a plea of not guilty has been entered; prior thereto, the case will remain on the arraignment calendar.

(Effective July 1, 1998)

RULE 856. INFORMAL ARRAIGNMENTS

In infraction or misdemeanor cases, except in failures to appear, when arrest warrants have been issued, and allegations of violations of Penal Code §§ 166.4, 192(c), 243.4, 273a, 273d, 273.5, 273.6, 422, or 647.6, or violations of Vehicle Code §§ 23152 and 23153 have been charged, except in unusual circumstances, private counsel, who are in good standing with the State Bar and the court, prior to a defendant's scheduled appearance date, may enter a plea of "Not Guilty" and set a pretrial and jury trial date with the clerk of the court pursuant to Penal Code § 977(a) as follows:

A. Telephone Arraignments.

At the court's discretion, attorneys, who are retained by misdemeanor or infraction defendants who have no outstanding warrants and who are not in custody, may arraign their clients by telephone. Telephone arraignments will be accepted from attorneys only. By utilizing the telephone arraignment procedure, the attorney represents:

1. That he or she is counsel for the defendant;
2. That the client has expressly authorized the attorney to appear on his/her behalf pursuant to Penal Code Section 977(a);
3. That the telephone arraignment constitutes a general appearance by the attorney;
4. That his/her client has specifically authorized the attorney to act as the client's agent for the

purpose of receiving notice from the court of the pretrial and trial dates;

5. That the client and attorney have agreed that notice of the date(s) to the attorney shall be deemed full, complete and valid notice to the client; and
6. That the attorney is authorized to waive time for trial.

Attorneys shall confirm pretrial and jury trial dates with the clerk's office, in writing, within ten calendar days of the telephone arraignment. Any bail/bond posted or O/R release shall remain in force from the date of the telephone arraignment to the next appearance date in the matter given to the attorney. If no bail/bond has been posted or if no O/R release has been signed by the defendant, the attorney must enclose a signed O/R release form with the above-mentioned written confirmation.

B. Counter Arraignments.

At the court's discretion, attorneys, who are retained by misdemeanor or infraction defendants, who have no outstanding warrants and who are not in custody, may personally appear at the clerk's office at the location where the case is initially scheduled to be heard. The required form is to be completed in triplicate and the original and two copies delivered to the clerk with the date for appearance left blank. In addition to the original and two copies of the form, the attorney must also lodge with the clerk a self-addressed, stamped envelope.

The clerk will set the case for pretrial and jury trial in the normal course of the court's business. The clerk will place the completed original form in the court file and mail one copy of the form to the attorney and one copy of the form to the prosecuting attorney.

Any bail/bond posted or O/R release shall remain in force from the date of the counter arraignment to the next appearance date in the matter given to the attorney. If no bail/bond has been posted or if no O/R release has been signed by the defendant, the attorney must file a signed O/R release form with the above-mentioned form.

C. Facsimile Arraignments.

At the court's discretion, attorneys, who are retained by misdemeanor or infraction defendants who have no outstanding warrants, may arraign their clients by

facsimile (FAX) machine. FAX arraignments will be accepted from attorneys only.

1. Attorneys shall utilize and fully complete the required court FAX arraignment form. The completed form must be received between 9:00 a.m. and 2:00 p.m. daily (excluding holidays and weekends), no sooner than seven and no later than two court days prior to the arraignment date.
2. FAX arraignment on in-custody defendants must be received prior to defendant being processed for video arraignment.
3. The court will set a pretrial hearing date and FAX acknowledgment by 5:00 p.m. on the next court day following the receipt of request for arraignment.
4. Ineligible or rejected forms will be sent to the submitting attorney by 5:00 p.m. on the court day following receipt of arraignment form.
5. Any bail/bond posted or O/R release shall remain in force from the date of the FAX arraignment to the next appearance date in the matter given to the attorney. If no bail/bond has been posted or if no O/R release has been signed by the defendant, the attorney must FAX a signed O/R release form with the above-mentioned form.
6. The attorney acknowledges and agrees that, by utilizing the FAX arraignment procedures, the attorney is the counsel for the defendant, and the FAX arraignment constitutes a general appearance.
7. The attorney shall, by signing and submitting the FAX arraignment form, be deemed to have made the representations, acknowledgments, and agreements set forth in these rules. By utilizing the FAX arraignment procedure, the attorney represents
 - a. that his/her client has specifically authorized the attorney to act as the client's agent for the purpose of receiving notice from the court of the pretrial date, and
 - b. the client and attorney have agreed that notice of the date to the attorney shall be deemed full, complete and valid notice to the client.

D. Advisement of Client.

The attorney agrees that his or her use of any informal arraignment procedure constitutes a representation to the court that the attorney has specifically advised the client that failure of the client to appear timely on the court date set for pretrial, upon order of the court, will constitute the crime of failure to appear, and a bench warrant may be ordered.

E. Failure to Comply.

Failure to comply with any of the provisions of the Informal Arraignment Rules may result in the presiding judge entering an order revoking the attorney's eligibility to use informal arraignment procedures at the court.

(Effective July 1, 1998; revised effective July 1, 1999)

**RULE 858. TRAFFIC TRIALS BY DECLARATION PURSUANT TO
VEHICLE CODE SECTION 40902**

A defendant may elect to have a trial by written declaration as fully set forth in Section 40902 of the Vehicle Code and Rule 828 of the California Rules of Court.

(Effective July 1, 1998; revised effective July 1, 1999)

RULE 860. TRANSFER OF CASES PURSUANT TO CCP SECTION 170

Any matter in which a Judicial Officer is disqualified pursuant to Code of Civil Procedure Section 170, et seq., will be transferred to the Master Calendar or Presiding Judge within the same court.

(Effective July 1, 1998)

RULE 862. MOTIONS TO CONTINUE

- A. No trial may be continued except upon a written motion establishing good cause pursuant to Penal Code Section 1050.
- B. Motions to continue the trial date shall be supported by affidavits or declarations detailing specific facts showing good cause that a continuance is necessary. In a failure to establish good cause, the court may consider sanctions pursuant to Penal Code Sections 1050 and 1050.5.
- C. In ruling on a motion to continue, the following factors will be considered:
 - 1. The time when the need for the continuance arose, and the diligence of counsel in bringing the need to the attention of the court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;
 - 2. The proximity of the motion to the trial date, the age of the case, the established time limits for processing cases, and the nature of any previous continuance or orders entered;
 - 3. Any injury or inconvenience caused to the party not requesting the continuance;
 - 4. Whether continuance may be avoided by substitution of attorneys or witnesses, or by the use of stipulation regarding testimony; and
 - 5. The earliest date all parties will be ready to proceed to trial.
- D. The following factors do not necessarily establish good cause for continuance:
 - 1. Convenience to or a stipulation between the parties;

2. Failure to expeditiously prepare for trial;
3. Failure of client to adhere to a financial agreement with an attorney;
4. Settlement negotiations not yet completed, including the need to communicate an offer to a client appearing through counsel; and
5. Recent substitution of trial counsel.

(Effective July 1, 1998)

RULE 864. MOTIONS TO SUPPRESS EVIDENCE**A. In Misdemeanor Cases:**

1. The notice of motion shall be in writing and specifically describe and list all evidence which is sought to be suppressed; and shall specifically state the legal theory or theories which are relied upon and urged for the suppression of evidence. A memorandum of points and authorities shall be attached and shall include a brief summary of the facts and cite specific case authority in support of the theory or theories urged to support or oppose suppression of the evidence.
2. If counsel desires that the seized evidence be produced by the People at the time of hearing, the notice of motion shall contain an appropriate demand therefor.
3. Notice of the motion and the memorandum of points and authorities shall be served on the prosecuting attorney and filed with the clerk, along with such proof of service, no less than ten days prior to the hearing date unless otherwise provided by law or otherwise ordered by the court. Written opposition is not required. However, if submitted, it must be served on the moving party and filed with the clerk, along with such proof of service, at least three days prior to the hearing.

B. Effect of Nonconforming Motion.

If any motion subject to this rule is not made within the time limits and pursuant to the requirements of this rule, the failure to do so shall constitute a waiver of the right to make the motion, but the court for good cause shown, may grant relief from the waiver.

(Effective July 1, 1998)

RULE 866. REQUEST FOR RETURNED DOCUMENTS BY MAIL

Any party requesting documents be returned by mail shall include a self-addressed, stamped envelope at the time the request is made.

(Adopted effective July 1, 1998)